BEFORE THE WAIKATO DISTRICT COUNCIL HEARINGS COMMITTEE

Under	the Resource Management Act 1991 ('the Act')
In the matter of	WAIKATO District Council Hearing 18 Rural Section
Between	**McCracken Surveys Ltd / Cheal Consultants Ltd** Applicant
And	**Waikato District Council** Consent Authority

Statement of Evidence of Philip Barrett

9 September 2020

Introduction

1. My name is Philp Barrett. I am the Planning Team Manager employed by Cheal Consultants Limited incorporating McCracken Surveys Ltd. I have worked as a planner for 23 years and am a full member of the New Zealand Planning Institute. I have a Bachelor of Arts (Hons) and Master of Resource & Environmental Planning from Massey University. I have worked for the Department of Conservation, as a private consultant and held senior management positions in two district councils.

2. I prepared submission 943 on behalf of McCracken Surveys Limited and have read the submissions received on the rural section and the Council Planner's s42A report and supporting documentation. Rule numbering in this report are taken from the section 42A report unless otherwise stated (paragraph 6).

3. I confirm I have read and agree to comply with the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014. I confirm this evidence is within my area of expertise except where I state that I am relying on facts or information provided by another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

4. Unless otherwise specified, all statements in this evidence are my own opinion.

5. I have prepared this statement based on my knowledge of the Resource Management Act 1991, the Waikato District Plan, my knowledge and experience of subdivision.

Key Issues

Allotment, Record of Title and Amalgamation

6. McCracken Surveys Limited [943.53] submission seeks to replace the term "lot" [allotment] with "Record of Title" to avoid consequences described below. Deletion of the term Allotment includes strikeout version Rules 22.4.1.1; 22.4.1.2; 22.4.1.4; 22.4.1.5; 22.4.1.6 and 22.4.1.7.

   Hearing 15 Definitions amends the definition of Lot (Allotment) to mean:

   a. any parcel of land under the Land Transfer Act 1952 that is a continuous area and whose boundaries are shown separately on a survey plan, whether or not—
   i. the subdivision shown on the survey plan has been allowed, or subdivision approval has been granted, under another Act; or
   ii. a subdivision consent for the subdivision shown on the survey plan has been granted under this Act; or
   b. any parcel of land or building or part of a building that is shown or identified separately—
   i. on a survey plan; or
   ii. on a licence within the meaning of Part 7A of the Land Transfer Act 1952; or
   c. any unit on a unit plan; or any parcel of land not subject to the Land Transfer Act 1952.

7. The Propsed District Plan (PDP) fee simple subdivison, boundary relocation and rural hamlet rules are premised on the need for existing Records of Title (RT) as the consideration starting point. The end point being the issuance of a RT that contains an allotment(s). Allotments are not the same as RT. A Record of Title may contain one or more allotments and allotments are contained in one RT. The proposed rules revert to the term allotment(s) based on Council legal advice. I submit that use of the term RT would overall provide clarity fro all subdivision, for at the end of the day, any allotment shown on a scheme plan of subdivision, unless a consent lapses, will become a RT containing allotment(s).

Effect of Rule 22.4.1.4 Boundary Relocation

8. The significance of using allotments instead of a RT is the effect created via the boundary relocation rule - 22.4.1.4(a)(iii) Not result in any additional allotments.

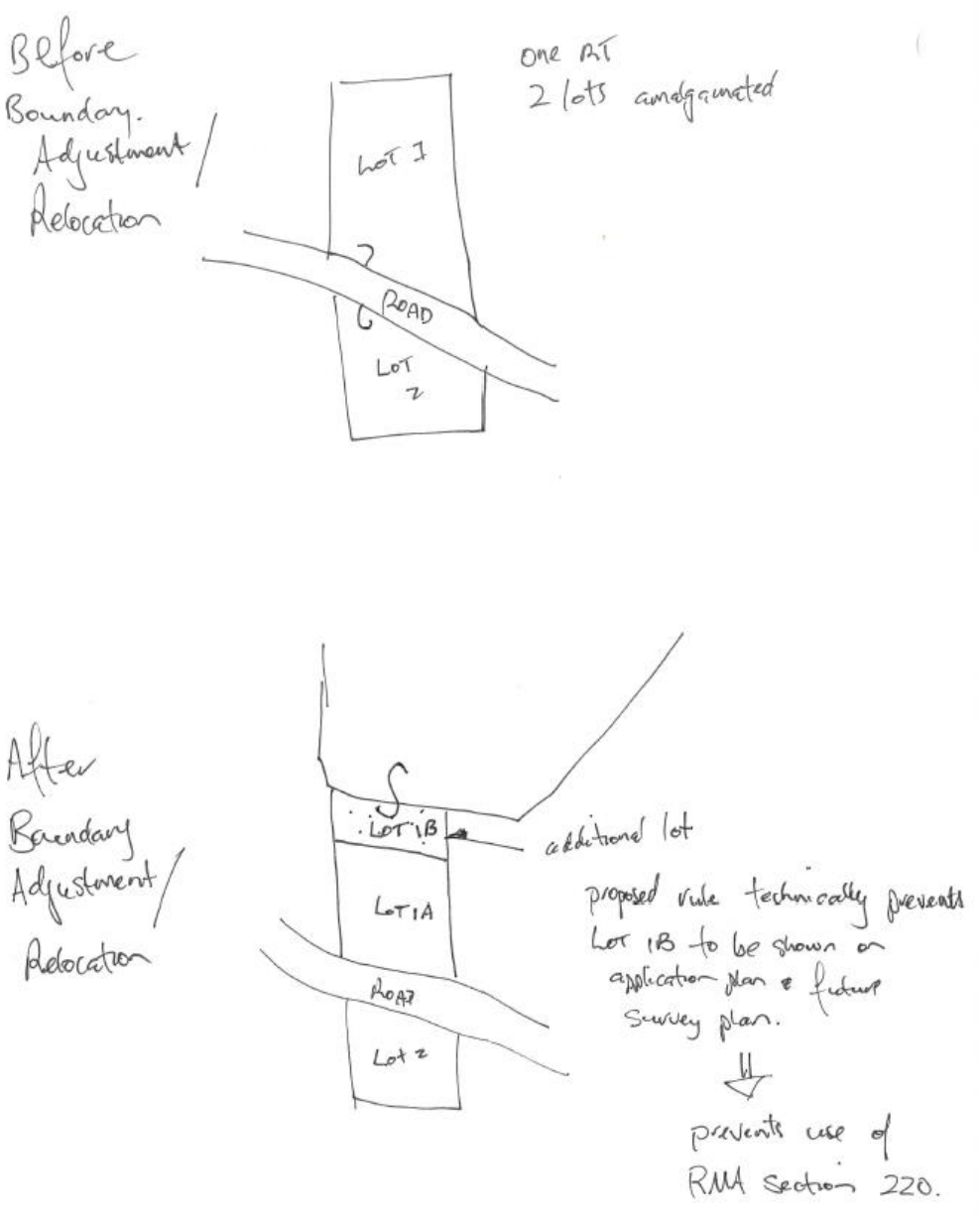
   This rule effectively precludes the lawful use of RMA section 220 by preventing an allotment from being created and amalgamated where it is necessary that an allotment is created for other purposes.

9. RMA Sections 220(1)(b) and 220(2)(a) provide for a subdivision consent to be issued subject to a condition requiring that land be amalgamated and held either in one title or subject to a covenant

between the land owner and the council that restricts its disposal, lease or otherwise except in conjunction with other land.

10. Amalgamation conditions are often used where, for example, a RT is separated by a public formed or unformed legal road and where two allotments are held together in one RT (see Scenario sketch 1). Access lots are also routinely subject to amalgamation.

Scenario Sketch 1



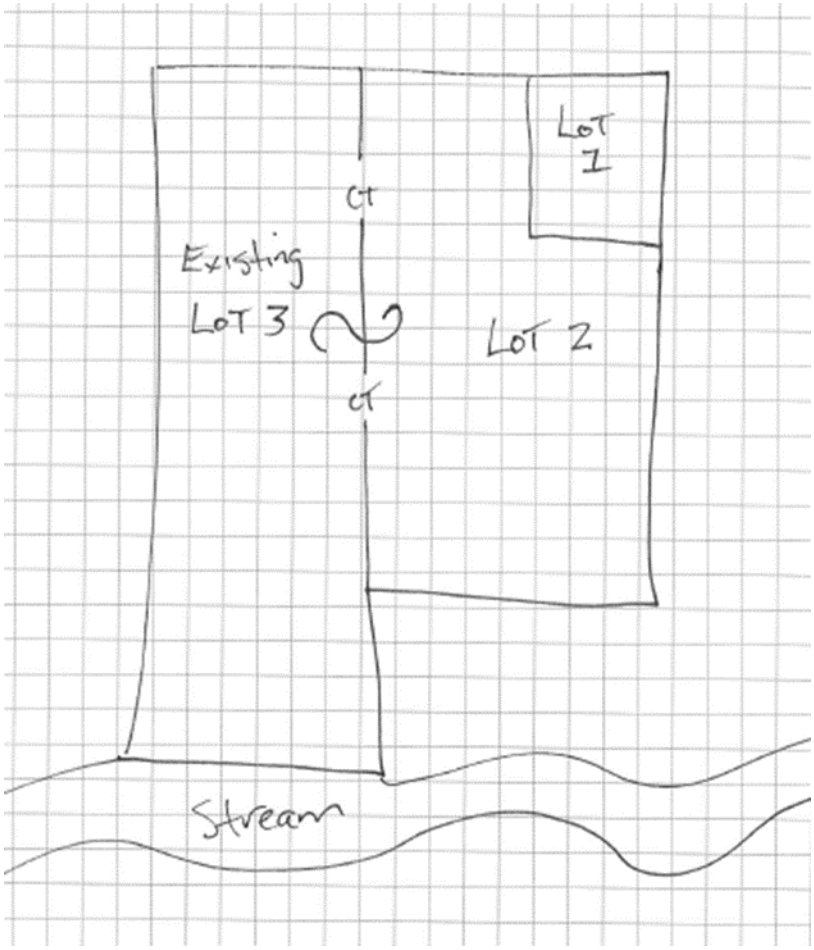
11. The legal road in scenario sketch 1 could also be a railway line, Crown land, stream, esplanade reseve / strip or marginal strip.

12. Lot 1B is shown as an <u>allotment</u> because, for example, parent RT's are often subejct to registered mortgages that require bank approval to allow the transfer of land. To be shown as a separate

allotment provides the evidence of that land exchange. Another significant outcome of the amalgamation with Lot 2, is a reduction in cost because Lot 2 is not drawn into subdivision survey work. Amalgamation requires no major survey work of Lot 2 to meet LINZ regulations, the boundaries and area is unchanged.

13. Scenario sketch 2 provides an example where two existing allotments adjoin a stream. Following boundary relocation 3 allotments are created. Lots 2 and 3 are subject to amalgamation. Technically the existing undelying RT of Lot 3 will be extinguished and a new RT number issued but the appellation, lot number and area, remains unchanged. Should a natural boundary, such as a stream, be drawn into the survey work, the time and costs can significantly escalate for no obvious resource management purpose. The use of amalgamation conditions in these scenarios have significant benefits for the applicant. The environment and the district plan remain unaffected subject to performance standard compliance because no new RT is created.

Scenario Sketch 2

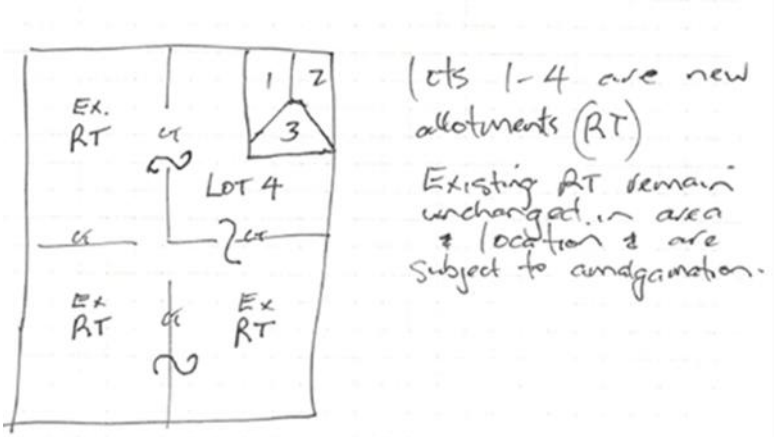


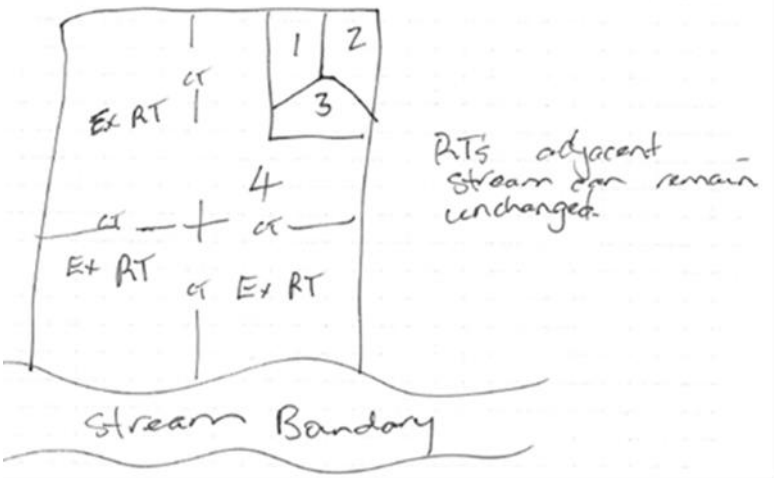
Rural Hamlet Subdivision

14. Rule 22.4.1.1(a)(vi) <u>It does not create any additional allotments beyond the number of existing Records of Title.</u>

15. Similary and for the same reasons discussed above, scenario sketch 3 shows a hamlet boundary relocation of four existing RT's that results in 4 new lots plus three existing RT's to be held together by amalgamation. Utilisation of amalgamation has no obvious knock on adverse effect on land fragmentaion, loss of high class soil, production ability or any other higher polilcy or policy document. This is because amalgamation contains allotments within one RT that are subejct to new RT dates and hence, under prohibited rules, do not create any further fee simple subdivision potential while retaining larger areas for rural productive use.

Scenario Sketch 3





Non Complying Activity Status

16. A second effect of using Allotments associated with boundary relocation subdivision is that boundary relocation fall to an unwarranted non complying activity status - pursuant to proposed Rule 22.4.1.1(a)(v) a boundary relocation balance allotment that does not have a miniumum 40ha; and sub rule (vi) it does not create an additional allotment.

17. Non complaince only happens because Council is promoting Allotment versus RT. It is not at all clear why a non-complying activity status is required when land can and should be subject to amalgamation. The focus should only be that one relocated allotment (future RT) is between 8000m² and 1.6ha in complaince with the performance standard. It does not matter at all whether the balance land is greater or smaller than 40ha, it is what it is. The proposed boundary relocation rules accept that the one small complying area allotment has no, or an acceptable adverse effect on land fragmentation, loss of productive land, high class soils or relevant policy. It should follow that the balance land similary creates no policy issue.

18. Rule 22.4.1.1(a)(vi) can be deleted. Rule 22.4.1.1(a)(v) deletes allotment in favour of RT.

High Class Soils

19. Rule 22.4.1.1(a)(vii) <u>The proposed allotments, excluding the balance allotment, must not be located on any high class soils.</u> This is a propsed new rule (not notified) and is opposed.

20. By Council own calculations, only 47% of rural land owners could comply with this rule. Council has potentially denied the other 53% of rural landowners with all or some high quality soils the ability to relocate existing Records of Title. Often farmers will relocate around existing and surplus dwellings that are already in situ and likely to be on high class soils.

21. Council planners report page 124 paragraph 218 states, in the general subdivsion context, *To have a rule that requires no high class soils at all, I consider would be unreasonable and impractical despite Policy 14.2 of the WRPS requiring Council to "avoid a decline in the availability of high class soils"*. The Council report notes, a number of times, a requirement to have consistency bewteen rules. However, in relation to boundary relocation there is no consistency with general subdivision in terms of high class soils.

22. The rule effectively discounts a significant number of landowners from utilising the hamlet rule. If this is the intention then it also discounts landowners from creating larger farming RT thus reducing the current RT subdivision and house number potential.

Existing dwellings and High Class Soils

23. Page 126 paragraph 127 the Council report states, in the context of minimum and maximum lots sizes, *From my experience, I would agree that there are many rural properties where an existing dwelling*

means that the effects of a subdivision are already part of the existing environment. However, where the subdivision demonstrates that the adverse effects of the proposal are minimal and there is good reason for the proposed lot to fall outside of the minimum or maximum thresholds, generally resource consent is granted. However what I would not want to see are the thresholds being tested simply because the proposal is subdividing an existing dwelling or rural activity. In my opinion this scenario should not be treated any differently from a subdivision where a vacant title is being proposed. The key consideration in my mind is what the effect of the subdivision will be and does it align with the higher policy direction.

24. It is entirely arguable that boundary relocation around an existing dwelling is substantially different from a vacant site precesily because the effects of a dwelling and the potential loss of high class soil are already established. The council report suggests that higher order policy is key. It is not obvious what the additional effect of the creation of a smaller (8000m² - 1.6ha) but not additional RT around an existing dwelling would have on higher order policy. The land under and surrounding the dwelling (curtilage) is lost to production.

25. In terms of land framentation, the PDP only refers to fragmentation resulting from subdivision once and requires in policy (5.2.3(a)) minimising the fragmentation of productive rural land, particularly where high quality soils are located. Fragmentation is also now a proposed restricted discretionary criteria.

26. There are no rules that relate directly to land fragmentation. If the district plan considered land fragmentation to be the important issue then an explicit hierarchy of land fragmentation provisions should be evident – and they are not. Hence there is no objective plan provision to explain and guide how land fragmentation is to be considered or is relevant to subdivision in terms of land use.

27. If in a broad context [citing Dr Reece Hill] land fragmentation in terms of high class soils, *the characteristics of Cover and Title are most relevant; Cover will determine whether high class soils can be used for primary production, and Title can determine whether a land use option is viable*. An existing dwelling and curtilage will have no additonal effect on cover and a RT around that dwelling will maintain that residential use. There is no apparant reason to introduce land fragmentation as it relates to existing dwellings. Interestingly, Council has sought to retain a maximum and minimum area that would, in the context of relocation around an existign dwelling, have the opposite intended effect to protect high quality soils.

28. There is a case to support the Hamlet restricted discretionary rule be amended to:
    1. Allow relocation around existing dwellings, subject to the maximum and minimum area rule unless the area is considered inapporpriate and reduced; and
    2. The deletion of fragmentation from restricted discretionary criteria insofar as it affects boundary relocation around existing dwellings.

Prohibited Rules

29. Prohibited rules PR2, PR3 and PR4 all contain a boundary relocation or rural hamlet subdivision rule exemption based on the Allotment terminology that again has a significant impact on boundary relocation subdivison.

30. For example, PR3 prohibits subdivision where a RT was issued after 6 December 1997 that results in any addtional allotment being located on any high class soils. There is no difficulty with this rule because it is based on the date of an existing RT and prohibits any new and additional allotment. The rule focus is on general subdivsion prohibition because an exception is being made for boundary relocation.

31. However, subrule (b)(v) refers to an exemption whereby *A boundary relocation (Rule 22.4.1.4) or rural hamlet subdivision (Rule 22.4.1.5), where the subdivision creates an additional allotment on land comprised in one Record of Title which existed prior to the subdivision and where there are no additional* allotments *created overall as a result of the subdivision.*

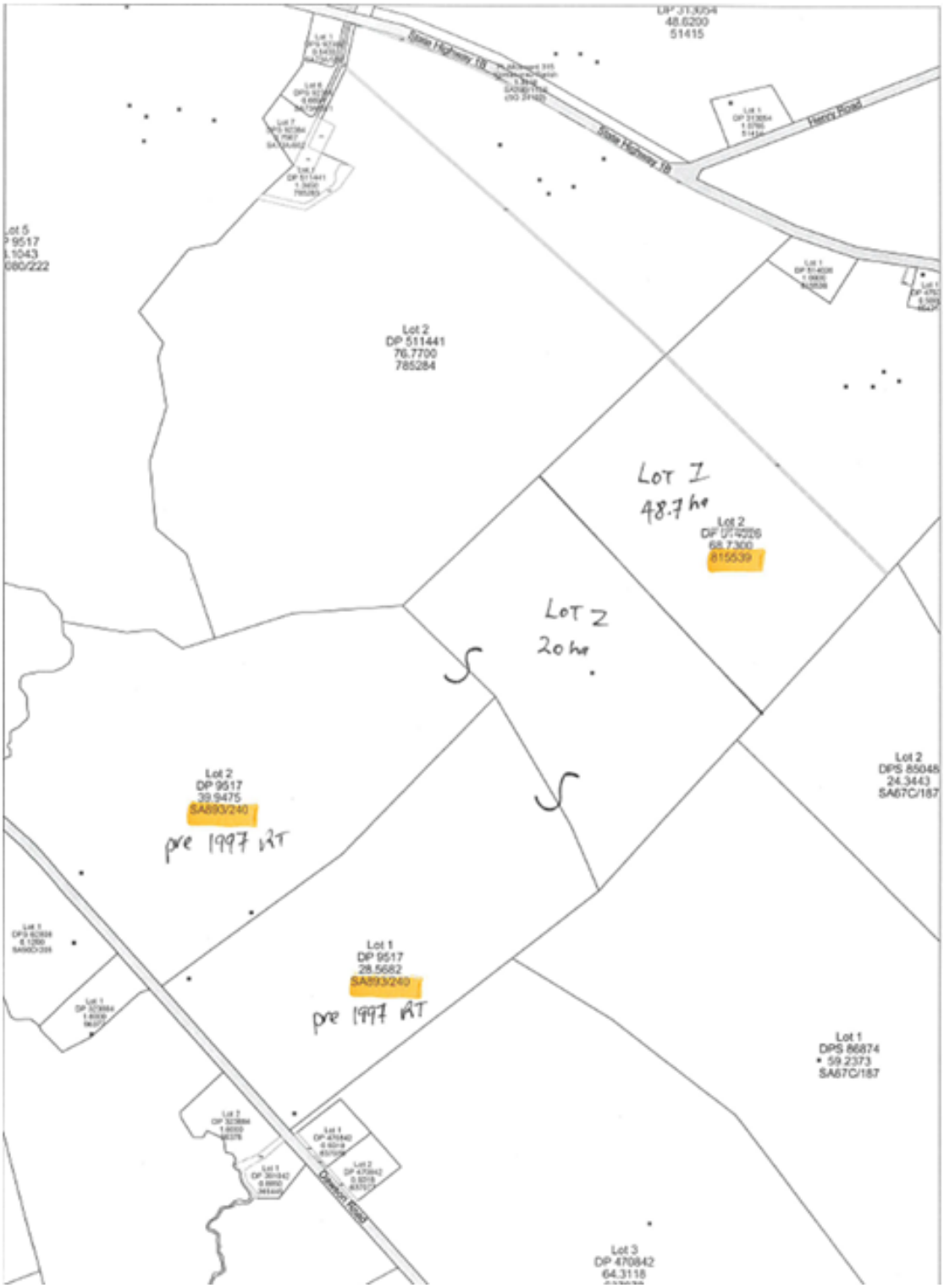
32. Scenario sketch 4 below provides the example. In this scenario RT 815539 is to sell and provide land to RT SA893/240 that contains two allotments and the RT date is prior to the subdivision but after 6 December 1997. Two new allotments are created Lot 1 (48.7ha) and Lot 2 (20ha). Lot 2 is then, pursuant to s220 of the RMA, is to be amlgamated with RT SA893/240 creating 3 lots within one RT that will have a new RT date. The creation of Lot 2 (20ha) is created for the reasons described already (e.g, mortgage on RT 815539).

33. The issue is that which is underlined the word - 'allotments'. This must be changed from allotment to Record of Title. Not doing so will result in boundary relocations that lawfully utilise amalgamtion will be prohibited. Amalgamtion is used in the majority of boundary relocations. The rule is untenable and will, as a matter of process (unable to lodge a resource consent), prevents boundary relocations from happening.

34. The same argument applies to PR2(b(v) and PR4(b(v) unless in the last sentence 'allotments' is replaced with RT as follows:

A boundary relocation (Rule 22.4.1.4) or rural hamlet subdivision (Rule 22.4.1.5), where the subdivision creates an additional allotment on land comprised in one Record of Title which existed prior to the subdivision and where there are no additional ~~allotments~~ Records of Title created overall as a result of the subdivision.

Scenario Sketch 4



Esplanade Reserve

35. Submission 943.12 McCracken Surveys Limited - Amend Rule 22.4.7 RD1 (b) - Esplanade reserves and esplanade strips, to include RMA s230(3) as a matter of discretion.

36. S42A report p263 reiterates *McCracken Surveys Limited [943.70] and [943.12], suggests including a reference to s230(3) of the RMA in the matters of discretion. Section 230(3) states:*
Except as provided by any rule in a district plan made under section 77(1), or a resource consent which waives, or reduces the width of, the esplanade reserve, where any allotment of less than 4 hectares is created when land is subdivided, an esplanade reserve 20 metres in width shall be set aside from that allotment along the mark of mean high water springs of the sea, and along the bank of any river or along the margin of any lake, as the case may be, and shall vest in accordance with section 231.

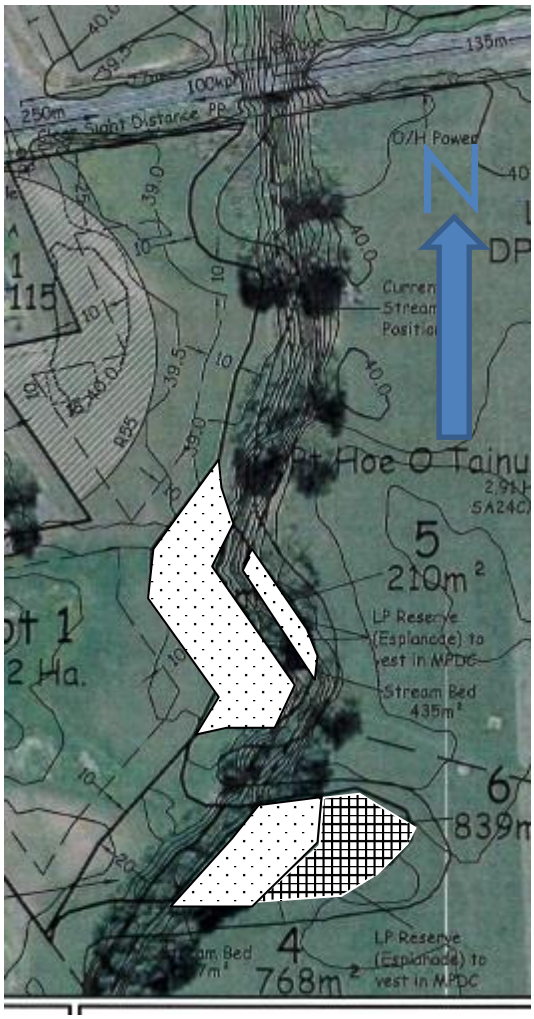
37. The Council planner makes the following comment:
…I agree that s230(3) is helpful in respect to the 20ha [20m] requirement and the opportunity to waive this either by the district plan rule or resource *consent. Given the rule already contains a matter of discretion for the width of the reserve or strip, in my view this already provides an opportunity to assess a proposal that cannot achieve the 20 metre requirement of s230. I therefore do not consider that an additional matter is required.*

38. The report appears to miss the point of the submission that was to seek a criterion that provides for a waiver, that is, no reserve is required. RMA Section 230(3) organises the words to provide for a waiver of a reserve, not just waiving the width of a reserve. The comma is important here, separating items in a list. The council can waive the width requirement or reduce the width. Incorporating this criterion can assure applicants that were a reserve / strip cannot be supported by a plan (e.g., specified river or a reference to a reserve management plan) a waiver can be considered and unhelpful reserves created that serve no obvious purpose under the Act can be avoided (as shown on the next page). By inserting a criterion to waive a reserve, will help to establish a clear analysis that will require council officers to fully consider RMA section 229 - Purpose for reserves rather than simply apply the default position.

39. The image below shows reserves separated by a stream (straightened via earthworks), an allotment disjointed from the main allotment to the east of the stream; disjointed reserves with no public access; no other reserves in the wider vicinity; unsupported by any council reserve management plan.

Disjointed reserves with no legal access (stream straightened)

Disjoined allotment east of stream



DATED Tuesday 9 September 2020

Philip Barrett

32AA Evaluation

1. Other Reasonably Practicable Options

There is no other reasonable option not to seek a change of terminology from Allotments to Record of Title for boundary relocation and rural hamlet rules and to seek the deletion of high class soils as it relates to rural hamlet subdivision. Doing nothing will result in the inability to lawfully use s220 of the RMA and allow the amalgamation of allotments. Do nothing would also result in boundary relocation subdivision under either rule, to be halted at the first step due to the current prohibited rule status.

The change from Allotments to Record of Title will provide consistency across all subdivision as well as provide boundary relocation opportunities for 53% of landowners potentially denied boundary relocation.

2. Effectiveness and Efficiency

The recommended amendments in my opinion align with the current and acceptable use by Council of RMA s220 and provides consistency across all subdivision types.

3. Costs and Benefits

There are no obvious additional council dollar or environmental costs associated with the submitted changes. Boundary relocation meeting performance standards creates no new Records of Titles that might otherwise result in future subdivision potential and subsequent effects on policy. There is however substantial cost to landowners should the changes not be made, the inability to undertake boundary relocation to rationalise existing Records of Title or to provide opportunities for farm succession. Failure to use amalgamation can introduce significant survey costs where existing RT's are drawn into the survey that require additional work that is not necessary due to use of amalgamation.

4. Risk of Acting or Not Acting

The risk is in not acting, given the key outcome that boundary relocation subdivision that utilises amalgamation will be prohibited.

5. **Decision about Most Appropriate Option**

For the reasons described in the evidence above, the submitted changes will allow amalgamation conditions to be utilised in boundary relocation subdivision applications that void a first process step of being deemed prohibited.